

# The Flinn Report

Illinois

# Regulation

Claire B. Eberle, Editor

700 Stratton Bldg., Springfield IL 62706

**Joint Committee on Administrative Rules**

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*Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.*

## New Regulations

### ☞ REAL ESTATE ADS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION adopted amendments for rules titled "Real Estate Licensure Act of 2000" (68 Ill Adm Code 1450), effective 6/8/06, to specify that advertising a property in a manner that creates a reasonable likelihood of confusion regarding the property's permitted use is deceptive and misleading advertising (e.g., advertising a property that is zoned single family as "two units" or "related apartment"). Additional changes reflect that these regulations now fall under the purview of DFPR's Division of Professional Regulation rather than the Office of Banks and Real Estate. Those affected by this rulemaking include real estate companies and agents.

Questions/requests for copies: Barb Smith, DFPR, 320 W. Washington, 3<sup>rd</sup> Fl., Springfield IL 62786, 217/785-0813, Fax 217/557-4451.

### ☞ PUBLIC ASSISTANCE

The DEPARTMENT OF HUMAN SERVICES adopted amendments for "Child Care" (89 Ill Adm Code 50), effective 6/6/06. Companion emergency amendments became effective 8/11/

05 and expired 1/7/06. In accordance with Public Act 93-361, DHS is updating the child care income eligibility guidelines based on the State median income for the fiscal year. For families ranging in size from 2 to 8, the maximum new gross monthly incomes range from \$2,051 to \$4,162 rather than \$1,960 to \$3,978. The tables that list parent co-payments per child are also amended to reflect the expanded range of allowable gross income. Those affected by this rulemaking include child care providers.

DHS also adopted amendments to implement Public Act 94-533 for "Temporary Assistance for Needy Families" (89 Ill Adm Code 112) and "Food Stamps" (89 Ill Adm Code 121), both effective 6/12/06. Companion emergency amendments for each became effective 10/4/05 and expired 3/2/06. Amendments to the Earnfare Program in Part 121 and the Work First/Pay After Program in Part 112 specify that the higher State minimum wage (currently \$6.50) rather than the currently lower federal minimum wage (\$5.15) will be used in calculating whether a program participant has worked the required number of hours.

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## Proposed Regulations

### ☞ INFORMAL TAX CONFERENCES

The Department of Revenue proposed amendments for rules titled "Informal Conference Board" (86 Ill Adm Code 215) to add the manager of the DOR Audit Bureau to the DOR Informal Conference Board (ICB) and allow the DOR director to appoint 2 additional employees to the Board. (The purpose of ICB is to review proposed adjustments to tax returns generated by DOR's Audit Bureau prior to issuance of any notice of tax liability, deficiency, or claim denial.) The appointed employees must have experience in State and local tax procedures. A Board member who recuses himself or herself due to a conflict of interest may designate a replacement. Board members will be assigned by the ICB administrator to 3-member panels to consider cases. The rulemaking also requires any person representing a taxpayer in an informal conference with the Board to file a duly executed power-of-attorney. A taxpayer's request for Board review must include the proposed adjustments being disputed and the reasons why the taxpayer disagrees with the proposed adjustments. The Board may refuse to take jurisdiction of the request or dismiss the request if the taxpayer fails without good cause to provide all information required by DOR. The filing of a request for review waives the applicable statute of limitations that would otherwise prevent DOR from the issuance of a notice of

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**NEW REGULATIONS:** Rules adopted by agencies this week.

**PROPOSED REGULATIONS:** Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

**QUESTIONS/COMMENTS/RULE TEXT:** Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

# New Regulations

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DHS rulemakings above: Tracie Drew, DHS, 100 S. Grand Ave. E., 3<sup>rd</sup> Fl; Springfield IL 62762, 217/785-9772.

## TOLL HIGHWAYS

The ILLINOIS STATE TOLL HIGHWAY AUTHORITY repealed “State Toll Highway Rules” (92 Ill Adm Code 2520) and replaced it with new rules with the same Title and Part number, effective 6/9/06. While the new Part retains substantially the same provisions of the repealed Part, they are clarified and reorganized. The Part is also expanded to implement portions of Public Act 94-636, which gives the Authority power to enter into inter-governmental agreements or contracts with outside sources for toll, fee, or revenue collection and to add various administrative requirements. Definitions are revised, related Illinois and federal statutes are incorporated, and vehicles equipped with devices that obstruct the visibility or electronic image recording of the license plate are prohibited on toll highways. A new appendix covers permit fees for overweight and overdimension vehicles and loads. A new subpart contains all matters related to the administrative adjudication system, including a provision specifying that the Secretary of State may suspend the driving privileges, vehicle registration, or both of a person failing to satisfy fines or fees imposed by the Authority. Violation notices and their effective dates; timely hearing requests; hearing officer appointments, powers, and duties; and other hearing-related provisions are also covered in this subpart.

New sections provide guidelines for I-PASS registration, penalties for various infractions, lessors’ or registered owners’ liabilities, final order enforcement, and judicial review. A further amendment specifies that tollway employees are not subject to the Illinois civil service system. Changes since 1<sup>st</sup> Notice cover penalties for I-PASS account holders cited for traffic violations (e.g., driving without a valid license or permit, driving on a suspended or revoked license, etc.) within ½ mile before, at, or beyond a toll collection point. Additional regulations address returned check fees, V-Toll penalties, sub-zero account balance policy, and due process provisions. Contractors with the Authority and users of the toll highway system are affected by this rulemaking.

ISTHA also adopted a new Part titled “Americans with Disabilities Act Grievance Procedure” (4 Ill Adm Code 1750), effective 6/9/06, to establish a methodology pursuant to the federal Americans with Disabilities Act of 1990 for resolving grievances asserted by individuals who feel they are discriminated against during programs, services, or activities offered by the Authority. Procedures and time frames for submitting written complaint forms, possible ISTHA actions, and an assurance of case-by-case resolution are covered.

Questions/requests for copies of the 3 ISTHA rulemakings above: Robert T. Lane, ISTHA, 2700 Ogden Ave., Downers Grove IL 60515, 630/271-6800, ext. 1530, Fax 630/271-7559.

## DRIVER’S LICENSES

The SECRETARY OF STATE adopted an amendment for “Cancellation, Revocation or Suspension of Licenses or Permits” (92 Ill Adm Code 1040), effective 6/12/06, to implement Public Acts 90-104 and 93-120. Sanctions for fleeing or attempting to elude a peace officer in a motor vehicle are amended by adding license revocation for a 3<sup>rd</sup> or subsequent conviction. Additional amendments increase suspension time for 1<sup>st</sup> and 2<sup>nd</sup> convictions from 3 and 6 months to 6 and 12 months respectively for drivers who have no suspensions or revocations on their driving record. If a driver’s record contains one or more suspensions and/or cleared revocations, excluding miscellaneous suspensions, suspension time for the 1<sup>st</sup> conviction remains 6 months. A 2<sup>nd</sup> conviction is changed to a 12-month suspension (proposed as “no action”). Another text change since 1<sup>st</sup> Notice adds a regulation specifying that if the driving record contains one or more open or pending revocations (excluding miscellaneous suspensions) and the arrest date of the incoming conviction occurred prior to commencement of the revocation period, a 1<sup>st</sup> or 2<sup>nd</sup> conviction results in “no action” and a 3<sup>rd</sup> or subsequent conviction results in license revocation.

Questions/requests for copies: JoAnn Wilson, Office of the Secretary of State, Driver Services Dept., 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/785-1441.

# Proposed Regulations

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audit adjustment; if requested by the Audit Board, the taxpayer must execute all necessary waivers for later audits while the matter is pending; and at any time prior to issuance of a decision, the taxpayer may submit a formal request during ICB review to settle the dispute. In-person conferences are an option to resolve a fail-

ure to respond with additional information, but the Board may deny an in-person conference for specified reasons. Information submitted to a conferee may be given to an auditor for revisions and review before a conference is held or a recommendation is made by a conferee. Additional amendments increase from 90 to 120

days the time frame for the decision to be issued after the date of request “whenever possible”, and provisions for a 90-day extension are stricken. The Board may issue procedures for processing requests for review that involve proposed liabilities, deficiencies or claim denials of \$5,000 or less (interest or penalties excluded). Deci-

# Proposed Regulations

sions are final except where a mathematical error, clerical error, or misrepresentation of material fact is made by the taxpayer, Board member, or staff. Further details concerning in-person conferences are included, also. When executed by the taxpayer or taxpayer's representative, the "action decision" becomes effective. Subsequent protests of the tax liability, deficiency, or claim denial filed with the Office of Administrative Hearings may not be resolved by informal review once an action decision is issued by the Board. Small businesses and not-for-profit corporations audited by DOR will be affected by this rulemaking.

Questions/requests for copies/comments until 8/7/06: Louise Calvert, DOR, 100 W. Randolph, Chicago IL 60601, 312/814-1722.

## WATERFOWL HUNTING

The DEPARTMENT OF NATURAL RESOURCES proposed amendments to "Duck, Goose and Coot Hunting" (17 Ill. Adm. 590) to update the 2006-07 hunting season. The Canada Goose quota system and corresponding quota zones are eliminated. Certain regulations that used to pertain to the Southern Illinois quota zone will remain in force, now identified by county. Also, the list of allowable shot sizes and types is updated to add "Wingmaster HD" to the list of prohibited ammunition. Spring Lake State Fish and Wildlife Area is added to the list of permit-controlled sites, and site-specific changes are made for the William Powers Conservation Area, Lake Sinnissippi, Marshall State Fish and Wildlife Area (Sparland Unit), Kickapoo State Recreation Area, Mermet Lake, Pyramid State Park (multiple units), Lake Shelbyville (multiple units), and Horseshoe Lake State Park (Madison County—multiple units).

Questions/requests for copies/comments until 8/7/06: Jack Price, DNR,

One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

## PAYDAY LOANS

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed 5 rulemakings to implement Section 4-30 of the Payday Loan Reform Act, which required the Department to promulgate rules regarding the issuance of payday loans by banks, savings banks, savings and loan associations, credit unions, and insurance companies within 6 months of the effective date of the Act. The proposed rulemakings, respectively, are: a new Part titled "Banks Engaging in Payday Lending" (38 Ill Adm Code 365); "Savings Bank Act" (38 Ill Adm Code 1075) amendments; "Illinois Savings and Loan Act of 1985" (38 Ill Adm Code 1000) amendments; "Illinois Credit Union Act" (38 Ill Adm Code 190) amendments; and a new Part titled "Insurance Companies Originating Payday Loans" (38 Ill Adm Code 902). The payday loan provisions are fundamentally the same except for the type of financial entity being regulated in each rulemaking. The rulemakings repeat the statutory definition of a "payday loan": a loan with an annual percentage rate exceeding 36% with a term not to exceed 120 days, in which a lender accepts a check and agrees to hold it before deposit or presentment, accepts an authorization to debit a consumer's account, or accepts an interest in a consumer's wages, which may include a wage assignment. Each financial entity (except insurance companies) must satisfactorily address all safety and soundness considerations identified by the Department in its examination and supervision of the entity, such considerations to include: risk-management practices for payday loan activities; capital adequacy; allowance for loan losses; classification of payday loans; and the establishment and maintenance of exten-

sion, deferral, renewal, and rewrite standards consistent with the Payday Loan Reform Act. Insurance companies must not offer payday loan products in a manner that will jeopardize a company's financial solvency pursuant to the Insurance Code. If the regulating division of the Department determines the entity's management of safety and soundness risks relating to payday loans is deficient, it may initiate corrective action under the entity's primary regulatory Act. The Department is also taking the opportunity to make revisions for its savings bank (Part 1075), savings and loan (Part 1000), and credit union (Part 190) rules to update statutory and internal cross-references and revise references to agency subdivisions in conformity with recent organizational changes. This rulemaking will affect all of the business entities named above. Some credit unions may fall under the small business requirements of the Illinois Administrative Procedure Act. Any banks meeting those requirements are unlikely to conduct payday loan operations.

Questions/requests for copies/comments until 8/7/06: Barb Smith at the DFPR address and telephone number above.

## INSURANCE

DFPR also proposed amendments to "Accident and Health Reserves" (50 Ill Adm Code 2004) to update incorporated national standards for accident and health reserves adopted by the National Association of Insurance Commissioners (NAIC) from the 2001 standard to the 2006 standard.

Questions/requests for copies/comments until 8/7/06: Joseph Clennon, DFPR, 320 W. Washington, 4<sup>th</sup> Fl., Springfield IL 62786, 217/785-8220.

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*Illinois General Assembly*

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700 Stratton Building Springfield IL 62706

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## Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's July 11, 2006 meeting in Chicago.

### DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Repeal of "Ceded Reinsurance of Property and Liability Insurers" (50 Ill Adm Code 923) proposed 10/14/05 (29 Ill Reg 15381)

### HEALTH FACILITIES PLANNING BOARD

Repeal of "Public Hearing and Comment Procedures" (77 Ill Adm Code 1140) proposed 10/28/05 (29 Ill Reg 16294)

Repeal of "Practice and Procedure in Administrative Hearings" (77 Ill Adm Code 1180) proposed 10/28/05 (29 Ill Reg 16304)

Repeal of "Permit Application Fees" (77 Ill Adm Code 1190) proposed 10/28/05 (29 Ill Reg 16322)

### DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Pay Plan" (80 Ill Adm Code 310) proposed 4/21/06 (30 Ill Reg 6444)